

In Re:

ROBERT JAMES BOONE and
SANDRA JEAN BOONE,

Debtors.

ROBERT JAMES BOONE,

Plaintiff,

vs.

THE STATE OF CALIFORNIA;
ARNOLD SCHWARZENEGGER, in his
official capacity as Governor
of California; COUNTY OF ALAMEDA
FAMILY SUPPORT DIV.; JAN STURLA, in
his official capacity as Director of
Child Support Services,

Defendants.

Bankruptcy Case
No. 96-61799-fra13

Adversary Proceeding
No. 09-6137-fra

MEMORANDUM OPINION¹

Plaintiff filed a complaint seeking declarative relief and damages for violation of the terms of the order confirming his chapter 13 plan. Defendants State of California, Arnold Schwarzenegger and Jan Sturla (the "California State Defendants") filed a motion to dismiss

¹ This disposition is not intended for publication other than on the Court's website.

1 themselves as party defendants. For the reasons that follow, Defendants'
2 motion will be granted, with Plaintiff given leave to replead.

3 FACTS

4 A. The Chapter 13 Bankruptcy

5 Plaintiff filed a chapter 13 bankruptcy on April 24, 1996
6 jointly with his wife Sandra Boone.² Creditor, and named defendant in
7 this adversary proceeding, County of Alameda Family Support Division
8 filed a proof of claim for an unsecured priority debt of \$20,964.62. The
9 debt was for unpaid child support payments calculated as of the
10 bankruptcy petition date.

11 Over the term of the chapter 13 plan, the Trustee paid a total
12 of \$20,964.62 to the Alameda Family Support Division, as well as payments
13 to another priority unsecured claimant (i.e. the IRS) and several secured
14 creditors. No interest was paid on the priority unsecured claims and
15 nonpriority unsecured claimants received no dividend. On October 12,
16 2000, an order was entered granting the Debtors a discharge of debts,
17 subject to certain exceptions as provided by the Bankruptcy Code.³ By the
18 terms of the order, creditors are prohibited from attempting to collect
19 any debt that has been discharged.

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24 ² The Court takes notice of its bankruptcy file which contains all documents
25 entered in Plaintiff's chapter 13 bankruptcy case, including proofs of claim filed by
creditors.

26 ³ Including those debts described under 11 U.S.C. § 523(a)(5) for spousal or child
support.

1 B. The Complaint

2 Plaintiff alleges that Defendant Alameda County, "while under
3 the direction and control of Sturla and Schwarzenegger," continues to
4 garnish Plaintiff's wages, tax refunds, and bank accounts and has
5 threatened him in other ways for a debt that was paid off by the chapter
6 13 bankruptcy. He seeks a declaration from this Court that the
7 Defendants violated the order confirming Debtors' chapter 13 plan,
8 compensatory civil contempt sanctions, punitive damages, compensatory
9 damages, costs and attorney fees, and an injunction on further collection
10 activities.

11 STANDARDS FOR MOTION TO DISMISS

12 Review of a complaint under Fed.R.Civ.P. 12(b)(6)⁴ is based on
13 the contents of the complaint, the allegations of which are accepted as
14 true and construed in the light most favorable to the plaintiff. North
15 Slope Borough v. Rogstad (*In Re Rogstad*), 126 F.3d 1224, 1228 (9th Cir.
16 1997)(citations omitted). "[O]nce a claim has been adequately stated, it
17 may be supported by showing any set of facts consistent with the
18 allegations in the complaint." Bell Atlantic Corp. v. Twombly, 127
19 S.Ct.1955, 1969 (2007)(internal citation omitted).⁵ This standard
20 requires "enough fact to raise a reasonable expectation that discovery
21 will reveal evidence [supporting the cause of action]. Id. at 1965. The
22 court need not accept as true unreasonable inferences or conclusory legal
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24 ⁴Fed.R.Civ.P. 12(b)(6) is made applicable by Fed.R.Bankr.P. 7012(b).

25 ⁵The Bell Atlantic Corp. opinion supercedes that part of Conley v. Gibson, 355
26 U.S. 41, 45-46 (1957), wherein the Supreme Court stated that dismissal for failure to
state a claim is improper unless it appears beyond a doubt that the plaintiff can prove
no set of facts to support his claim or entitle him to relief.

1 allegations cast in the form of factual allegations. Naert v. Daff, (*In*
2 *Re Washington Trust Deed Service Corp.*), 224 B.R. 109, 112 (BAP 9th Cir.
3 1998).

4 In considering the motion, the court may not consider any
5 material "beyond the pleadings." Hal Roach Studios. Inc. v. Richard
6 Feiner and Co. Inc., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). However,
7 material which is properly submitted as part of the complaint may be
8 considered. Id. Exhibits submitted with the complaint may also be
9 considered. Durning v. The First Boston Corp., 815 F.2d 1265, 1267 (9th
10 Cir. 1987). Further, a document whose contents are alleged in the
11 complaint, or which is crucial to the complaint, and whose authenticity
12 no party questions, but which is not physically attached to the pleading,
13 may be considered. Branch v. Tunnell, 14 F.3d 449, 453-454 (9th Cir.
14 1994), cert. den. 119 S. Ct. 510(1998)(contents alleged in, but not
15 attached to, complaint); Parrino v. FHP, Inc., 146 F.3d 699, 705-706 (9th
16 Cir. 1998)(not specifically alleged and unattached, but integral to
17 plaintiffs claims). Finally, matters that may be judicially noticed may
18 be considered, Mack v. South Bay Beer Distributors, Inc., 798 F.2d 1279,
19 1282 (9th Cir. 1986), abrogated on other grounds, Astoria Federal Savings
20 and Loan Ass'n v. Solimino, 501 U.S. 104 (1991), including court records
21 in related or underlying cases. In re American Continental Corp./ Lincoln
22 Sav. & Loan Securities Litigation, 102 F.3d 1524, 1537 (9th Cir. 1996),
23 rev'd on other grounds sub nom., Lexecon Inc. v. Milberg Weiss Bershad
24 Hynes and Lerach, 523 U.S. 26 (1998).

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1 The Supreme Court in Central Virginia Community College v. Katz, 546 U.S.
2 356 (2006) held that the States acquiesced in a subordination of their
3 sovereign immunity with respect to the *in rem* jurisdiction of the
4 bankruptcy court when they ratified the U.S. Constitution containing the
5 Bankruptcy Clause. However, the damage claims asserted by Plaintiff
6 herein requires not *in rem* jurisdiction, but *in personam* jurisdiction of
7 the California State Defendants.

8 Counsel for Plaintiff has admitted that this Court lacks
9 jurisdiction over the California State Defendants in their official
10 capacities and that he intends to name Messrs. Sturla and Schwarzenegger
11 in their individual capacities. See Smith v. Wade, 461 U.S. 630, 632
12 (1983). In a repled complaint, Plaintiff has the burden to establish
13 that this court has *in personam* jurisdiction over the Defendants.
14 Failure to establish jurisdiction over these Defendants will result in
15 their dismissal.

16 CONCLUSION

17 For the reasons given, the motion to dismiss by Defendants
18 State of California, Arnold Schwarzenegger and Jan Sturla, in their
19 official capacities, will be granted. Plaintiff will be allowed to file
20 an amended complaint taking into account the Court's concerns addressed
21 herein. An order will be entered by the Court consistent with this
22 Memorandum Opinion.



25 FRANK R. ALLEY, III
26 Bankruptcy Judge